

IN SENATE OF THE UNITED STATES.

DECEMBER 29, 1847.

Submitted, and ordered to be printed.

Mr. WESTCOTT made the following

REPORT:

The Committee on Claims, to whom was referred the petition of Luther Blake, claiming to be assignee of Lemuel B. Nichols, by his agent, William Steuart, report:

That the papers accompanying said petition were, with it, submitted to the Commissioner of Indian Affairs, with a request that he would examine the same fully, and communicate his opinion in writing to the committee; and also to furnish them a copy of the decision of Mr. Herring, commissioner, May 7, 1833, rejecting the claim. The communication from Mr. Medill, dated December 22, 1847, and the copy of the document asked for, are herewith submitted to the Senate. The committee concur with the commissioner, in the opinion that this claim should not be allowed, and not merely for the reasons he suggests, which are entirely satisfactory, but *for others* equally conclusive, founded upon the manner in which the claim is presented, and the character of the proofs adduced. The adoption of the following resolution is therefore recommended:

Resolved, That the prayer of the petition of Luther Blake, claiming to be the transferree of Samuel B. Nichols, deceased, should not be granted.

WAR DEPARTMENT,
Office Indian Affairs, May 7, 1833.

SIR: Lemuel B. Nichols claims two hundred and fifty dollars, for services rendered in assisting the emigrating party of Creek Indians to the western Creek agency, from the 7th October, 1827, to the 1st March, 1828, at one dollar and seventy-five cents per day.

There is no proof of the contract. D. Brearly, late agent, certifies that Nichols was one of the party who accompanied him to explore the country west of the Mississippi, in reference to the emigration of the Creek Indians, and that he accompanied the Creek em-

igrants in 1827, on their journey to the Arkansas. He does not state whether Nichols is an Indian or a white man, nor in what capacity he went, nor for what time he was employed, nor how much he was to be allowed. The services in the account are stated to have begun on the 7th October, and it is fair to conclude that the compensation was then, or had been previously, agreed upon; and yet, Thomas Anthony certifies, that in the November following, he was present at a conversation between Brearly and Nichols, when Brearly promised Nichols to make him compensation for any services he might render the emigrating Creeks, by assisting in their removal. There is no affidavit of the correctness of the account by the party, himself, or either of the gentlemen who have certified in his behalf.

Besides, the claim is stale; and no good reason can be perceived why, if it be fair, it was not sooner presented, when there would have been more facility in proving or disproving the account. The claim is disallowed.

He also claims one hundred and twenty-five dollars for a horse, said to be stolen from him while he was assisting the emigrating Creeks to the western Creek agency in 1827. There is no affidavit of the theft or loss. There is a certificate by Thomas Anthony, that the horse was stolen, and a certificate by Chilly McIntosh, that the account, as presented by Nichols, is just and true; but there is not even a certificate by the party, himself, or any one else, as to the value of the horse. There is the same objection, as in the preceding case, to the staleness of the claim. This claim is also disallowed.

Respectfully, your obedient servant,

ELBERT HERRING.

Col. WM. STEUART,
Georgetown, D. C.

WAR DEPARTMENT,
Office Indian Affairs, December 22, 1847.

SIR: I have the honor to return herewith the papers in the case of L. B. Nichols, deceased, which accompanied your letter of the 15th instant, making inquiries in relation thereto.

The papers set forth a claim for alleged services in assisting in the emigration of a party of Creeks, from 7th October, 1827, to 1st March, 1828, 144 days, at \$1 75 per day..... \$252
And for the value of a horse alleged to have been stolen from him at that time..... 125

377

In support of the claim, the following papers are submitted: 1st. Certificate of Thomas Anthony, acting sub-agent, dated 28th June, 1830; which is in substance, that he was present at a conver-

sation between D. Brearly, the agent, and L. B. Nichols, in November, 1827; and that said Brearly did then promise to make compensation to Nichols for any services he *might* render the emigrating Creeks by assisting in their removal.

This is not sworn to, and is not therefore evidence; but if it were, it only shows a promise of compensation for future services, and would not apply to any prior services.

2d. Certificate from the same, dated 28th June, 1830, says Nichols was ordered by Joseph H. Brearly, (who was acting for his father, D. Brearly,) then on the advance with a party, to go back and bring up some Indians, and who gave him funds; also, that General McIntosh and Doctor Wharton, requested Nichols to attend to that business; that, in the discharge of such duty, his horse was stolen.

This is no better evidence than the first, and no authority in the persons named is recognised. If there was a necessity for the service, it should have been required by the agent himself, or by the acting agent, if he had authority. Not having been so required, is strongly presumptive that it was not necessary. There is no testimony as to the nature of the services, the time, or what was a fair compensation. As to the horse, Anthony says he was stolen; but by whom, whether white, black, or red man, and the value thereof, are not stated. For aught that appears to the contrary, it may have been lost through the negligence of the owner.

Attached to the account for the horse, is a certificate of Chilly McIntosh, in these words: "I do certify the above account is just and true." This is entirely too indefinite to be of any weight, to say nothing of the facility with which white persons may obtain the signature of Indians to any sort of statements.

3d. Statement of D. Brearly, late agent, &c., sworn to: Says Nichols was one of the party who *accompanied* him to explore the country west of the Mississippi, in reference to the emigration of the Creeks; that Nichols accompanied the emigrants in 1827, on their journey to the Arkansas; that McIntosh's name (as noticed above) is genuine; that Anthony was appointed acting sub-agent by him, to whose official acts credit is due; that his (Brearly's) accounts will show similar claims to have been allowed; and that his instructions fully authorized him to appoint such persons as were proper and necessary. Recollects Nichols had a horse stolen from him.

Brearly's statement is considered altogether unsatisfactory. It does not show that Nichols actually was employed by him or any one else; nothing as to the nature of his service, of any promise being made of compensation, &c.; but that he accompanied the Indians, though in what capacity and by whose authority, is not mentioned. There is no account presented for services while Nichols accompanied the exploring party, (which was before the emigration;) and even if he was authorized to accompany the emigrating party, under a promise of being paid for what aid he might render, it is unreasonable to suppose that the Indians were on the route from 7th October, 1827, to March, 1828, a period of five months, for which he charges. As to that part of

his evidence respecting the signature of McIntosh and the official capacity of Anthony, the claim is not materially affected thereby; and with regard to his reference to the allowance of similar claims, if any, so indefinitely stated and badly supported as this were, it was done wrongfully, and affords no justifiable precedent. There is no direct or satisfactory evidence that Nichols was properly authorized to render the service charged for, what service was actually rendered, or what per diem or compensation was engaged to be allowed him.

4th. Testimony of Luther Blake.—Claim of Nichols is, to the best of his knowledge and belief, just and true. Nichols gave him a power of attorney to collect the same; frequently conversed with Colonel Brearly about it, who stated that the claim was reasonable, and that had it been presented at him while agent he would have paid it; that on application to the department the claim was suspended, for want of additional proof; that, subsequently, he obtained Colonel Brearly's deposition, (supposed to be the one above noticed,) sustaining the charge; Nichols died, and the claim has remained unsettled.

The deposition of Brearly has already been commented upon. Statements made from hearsay or verbal communications cannot be regarded as satisfactory evidence.

5th. Certificate of Chilly McIntosh and another Indian, dated August, 1847—which is not proof—that they were of the party who emigrated under Colonel D. D. Brearly, in 1827 and 1828, and that Nichols was an assistant under Colonel Brearly, from October 1827, to March, 1828; that while in the line of his duty, he had a horse stolen from him, worth one hundred and twenty-five dollars; and that for his services he was promised by Brearly he should be well paid.

Here, as in the rest of the papers, there is nothing to show the nature, extent, and value of service; and it is not stated how, or by whom the horse was stolen, nor for what reason his value was estimated at the sum named. An examination of the records and files of this office has been made, but there is nowhere found the name of Lemuel B. Nichols, except where it is shown that the claim has been acted upon and rejected.

I have the honor also to enclose, as requested by you, the decision of this office on the claim, dated 7th May, 1833.

Respectfully, your obedient servant,

W. MEDILL.

Hon. J. D. WESTCOTT, JR.

Committee on Claims, Senate, U. S.